87-414

Supreme Court, U.S.
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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

EARLENE POLYAK — Appellant

vs

WILLIAM BOSTON AND
BOSTON BATES & HOLT — Appellees

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JURISDICTIONAL STATEMENT

EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Is the Court of Appeals affirming the abuse of discreation by District Court in dismissal of question of possible malfeasance, or negilence by lawyers without jury trial to determine if violation of Tennessee Statute on which pro se litigant relies for property right denial of due process and depriviation of constitutional rights and laws?

2. If Court of Appeals affirms District Court support of State Trial Judge's order to sell property under doctrine of comity versus Fifth, Seventh and Fourteenth Amendments, should constitutional question be certified to Supreme Court?

3. Does lack of assistance of lawyers after representing pro se litigant's investment and possession of property for more than seven(7) years and writing order to sell without any compensation for investment pose constitutional question and right to damages?

4. Does District Judge's order for pro se litigant to get medical certificate prior to motion case for jury trial deny right of due process and liberty to defend herself and unconstitutional?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES.....	iii
OPINIONS BELOW.....	2
JURISDICTION.....	2
CONSTITUTIONAL PROVISIONS.....	3
STATEMENT OF THE CASE.....	5
REASONS.....	13
CONCLUSION.....	26

TABLE OF AUTHORITIES

	Page
TCA.....	14
Cord v Smith C A Cal..... 1964 322 F 2d 780 376 908	17
G & Merriman Co. v Saafield,..... 241 US 22 28 36 S Ct. 477 60 L Ed 868	26
Hagerty v Hagerty, Tenn 172 259(1919).....	14
Harris v Gibson, C A Ga.,1936..... 322 F 2d 780 376 US 908	17
Hartly Ten Co. v U.S. Dist Ct. Southern .... District of Cal. C.A. 1961	17
Lindell v Lindell, 135 368 371(1919).....	15
Petraco-valley Oil Refining v U.S..... Dept. of Energy 633 F. 194 199(1980)	21
Martin v Taylor, 521 S.W. 2d 582.....	15
Vandenburg v Molder,4 Tenn. Civ..... App. (Higgins) 111 (1913)	14

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JURISDICTIONAL STATEMENT

Appellant, Plaintiff below is Earlene Polyak, Appeal No. 86-5916, District Court No. 1:86-0036.

Appellees, Defendants below are William Boston & Boston Bates & Holt.

Companion Cases:Earlene Polyak v William Boston and Boston Bates & Holt No. 3:85X-108; Thomas Stack and Henry Henry & Stack No. 1:85÷0125(Appeal No. 85-5166); Counter-Claim Earlene Polyak v Buford Evans & Sons No. 1:85-0120; all joined by 28 U.S.C. 1441(c) to Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence County No. 1:85-0116(Appeal No. 85-6135 and 85-6134).

Re: Earlene Polyak v Thomas A Wiseman No.86-5536,Writ of Mandamus No.86-5460, and No.86-5462.

All companion cases arise out of Frank Hulen and Wilma Lesnansky No.1:84-0082(Appeal No. 84-6090.

OPINIONS BELOW

The opinions of the United States Court of Appeals are set forth in Appendix A, and the opinions of the United States District Court at Nashville, and Columbia,Tennessee are set forth in Appendix B.The opinions of companion cases are set forth in Appendix C.

JURISDICTION

The order of the United States Court of Appeals for the Sixth Circuit was entered on May 6, 1987.The Rehearing En Banc was denied on June 24, 1987. The Notice of Appeal was filed on June 29, 1987. This Jurisdictional Statement is filed within ninety(90) days thereof.

Notice of Appeal is pursuant to 28 U.S.C.1254(2)

The jurisdiction of this Court is invoked pursuant to Article III, Sec. 2, which states that the judicial power shall extend to all cases in law and equity, between a State and citizen of another State; between citizens of different States.

The jurisdiction is invoked under 42 U.S.C.Sec. 1981, 1982, and 28 U.S.C.1443, and the Fifth,Fourteenth Amdndments. 5 U.S.C 504 Equal Access to

Justice. The federal and constituional questions were timely raised in the denial of due process Civil and Constitutional rights and laws to invoke the jurisdiction of the Supreme Court of the United States.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment provides as follows:

> No... person shall be deprived of life, liberty; or property; without due process of law; nor shall private property be taken for public use, without just compensation.
> U.S. Const., amen.V Cl 3 & 4.

The pertinent portion of the Seventh Amendment provides as follows:

> ...where the value in controversy shall exceed twenty dollars, the right of a jury trial shall be preserved...
> U.S. Const. amen VII.

The pertinent portion of the Eight Amendment provides as follows:

> ... nor excessive fines imposed, nor cruel and unusual punishment inflicted.
> U.S. Const. amend. VIII.

The pertinent portion of the fourteenth Amendment follows:

> No state shall make or enforce any law which shall abridge the priveleges or immunities of

citizens of the United States; Nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV.

28 U.S.C.: Any of the following civil actions ... commenced in a State Court may be removed by defendant to district court....

(1) Against any person who is denied or cannot enforce in the Courts of such state a law providing of equal civil rights of citizens of the United States or of all persons within its jurisdiction.

(2) For any act under the color of authority deprived from any law providing for equal rights....

42 U.S.C. Sec.1981:

All persons within the jurisdiction of the United States shall have the same right in every state to make and enforce contracts,to sue ... to the full and equal benefits of all laws.

42 U.S.C. 1982:

All citizens of the United States shall have the same right in every state... to inherit hold, purchase lease and convey real and personal property.

43 U.S.C. Sec. 1983.

Every person, who under the color of any statute, ordinance, regulation, custom or usuage of any state...subject or caused to be subjected any citizen of the United States or other person within its jurisdiction thereto the deprivialtion of rights and priveleges

or immunities secured by the constitution and laws, shall be liable to the party injured in the action at law in equity or other proceedings for the parties.

28 U.S.C. 1651(a).

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their jurisdictionand agreeable to usuages and prive'les of law.

28 U.S.C. 1254(2).

By appeal by a party relying on a state State statute held by a court of appeals to be invalid as repguent to the constitution , treaties or laws of the United States,... and the review on appeal shall be restricted to the Federal questions presented.

28 U.S.C. 2403.

In any action... where the constitutionality of a statute of that State affecting public interests drawn into question.

STATEMENT OF THE CASE

Appellant does not have any knowledge or expertise in the legal profession, but she sincerely believes that the lack of assistance of Appellees, William Boston and Boston Bates & Holt, who represented her family since Jaunary 1976, resulted in her injury in action at law when they divided their lolyalties and sued her for sale of her real and personal property disregarding State Statute.

In these actions at law, Appellant believes that she was denied the protection of State Statute 29-27-201 and the depriviation of civil and constitutional rights involving her property as supported by the Fifth and Fourteenth Amendments.

As a result of settlement by agreement to partition in kind with co-tenants Frank Hulen and Wilma Lesnansky in 1976, Appellant has restored the house on her agreed partition of said property for a retirement home and maintains it to this date. She has a considerable investment in this house which includes, but is not liminited to a new roof $1200.00, termite control, electrical repair, telephone installation insurance, painting and restoration of the exterior and interior of the entire building.

On July 29, 1983, the Honorable Jim Hamilton, Judge,Chancery and Circuit Courts of Lawrence County, verbally ordered said property sold within about two hours while the jury was out on another trial in Maury County when complaint filed in Lawrence County and in disregard of Tennesee law. Appellant believes Mr. Boston's son was working in the Court on this day. The loss of this property will be an irreparable damage and the loss of a right to never be re-

gained in crop rent and investment in retirement home.Appellant is handicapped and disabled as a result of open-heart surgery and complications.

Mr. William Boston, Boston Bates & Holt prepared the order of sale of property in which Appellant was not awarded any money for restoration and maintenance of the house since 1976(App.C p.46). Mr. Henry Stack, Henry Henry & Stack signed this order aver Appellant's objections to him, and Judge Hamilton on October 19, 1983. Mr. Stack retained Mr. Buford Evans & Sons to survey this property without her knowledge or permission, and Appellant relieved Mr. Stack of services on December 19, 1983.

On December 19, 1983, Appellant argued for a New Trial based on(1) Wilma Lesnansky signed complaint, but did not testify and valuable information was withheld;(2)Appellant was taken across county lines against Tennessee law;(3)she was forced to testify while acutely ill as a result of being exposed to 102 degree temperature and nation wide warning to heart patients;(4) hearing was conducted while jury was out on another trial and was not given adequate time and consideration, and Alex Polyak did not get to testify about division lines.

In the alternative, Appellant argued motion for alteration or amendment of judgment to allow reinbursement for restoration and maintenance prior to distribution of proceeds of the sale Dec.19, 1983. Judge stated that the Court would prepare a release of counsel for Thomas Stack, Henry & Stack, William Boston would prepare the judgment and instructed pro se ligitant to get appeal to judgment in within ninety (90) days. Judgment prepared by Charles Holt and signed by Charles Holt and Judge Hamilton, which is unappealable Judgment(App. Cp.48). Thomas Stack prepared order dismissing himself, Henry Henry & Stack, signed by Thomas Stack, William Boston, and Judge Hamilton On January 10, 1984(App. C p. 48).

The appeal was dismissed in the Court of Appeals Tennessee, stating that order of dismissal should have been appealed and unappealable order, which is not final order (App. C.p. 48).

Physician had recommended that Appellant go to warmer climate for heart and acute bronchitis when she notified to go to trial in Buford Evans & Sons v Darlene Polyak on December 26, 1984. She was unprepared, did not expect to go to trial and did not have time to get lawyer. Her husband brought her on

pillows in back seat of car to stand trial. She submitted a motion for a continuance based on extreme burden her appearance in Court would place upon her health, which Judge Hamilton disregarded as all of her motions and petitions, and she submitted a motion for the Judge to disqualify himself,

Appellant believes Judge Hamilton prejudiced jury against her and her husband and the judgment was finally entered to appeal on August 7, and Amended Judgment on August 22, 1985, but the Judge dismissed Motion to forward record to Court of Appeals on November 7, 1987,

The requirement that a Notice of Appeal be filed with the Court of Appeals was deleted in Rule 5(a) Rules of Appellate Procedure on August 15, 1984. Pro se litigant was denied appeal as a right.

On November 8, 1985, Appellant filed complaint against Jim T. Hamilton and the Circuit Court of Lawrence County in the United States District Court No. 1:85-0116, and joined to this complaint under 28 U.S.C. 1441(c), Counter-claim Earlene Polyak v Buford Evans No.1:85-0120; Earlene Polyak v Thomas Stack Henry Henry & Stack No. 1:85-0125, and William Boston v Boston Bates & Holt No. 3:85X-108. These

cases were grounded in the denial of due process and the depriviation of civil and constitutional rights and laws in the state courts.

Prior to submitting these complaints, Appellant found orders on Motions for nonsuits, 10611 Earlene Polya v William Boston Boston Bates & Holt and No. 10612 Earlene Polyak v Thomas Stack, Henry Henry & Stack, which appeared to be a dismissal to her objection to the sale of her property in Chancery Court on Circuit Court Cases on December 26, 1984. Nonsuits signed by Judge Hamilton on October 9,1984.

All of the above cases arise out of Frank Hulen and Wilma Lesnansky v Earlene Polyak Chancery No. 1974. Appellant contacted the Honorable Thomas A. Wiseman and understood that this Case could be removed to United States District Court under divversity of citizenship, under original jurisdiction No. 1:84-0082(appeal No. 84-6090). This case was consolidated over Appellant's objection in U.S. Court of Appeals for the Sixth Circuit No.85-5032/ 5101/5147 Earlene Polyak v Frank Hulen and Wilma Lesnansky.

Judge Wiseman dismissed No. 1:85-0116, within five days, and enjoined Appellant from filing further

complaints in the U.S. District Court(App.Cp.33). Case No. 1:85-0120 was dismissed and remanded back to the state November 26, 1985,and has been appealed to the U.S. Court of Appeals and Supreme Court of the United States(Earlene Polyak v Buford Evans).

Case No. 1:85-0125 Earlene Polyak v Thomas Stack Henry Henry & Stack was filed on December 3, 1985. Judge Wiseman found that "this petition presents allegations of attorney negilence and malfeasance which allow it to survive initial interview. Although Jude Wiseman found evidence of negilence and malfeasance, jury trial was never scheduled and all pro se ligitant's motions were disregarded(App.C34)Restraining order was denied on December 11, 1985, and denial of Petition to Rehear Restraining Order was appealed to the U.S. Court of Appeals No. 85-5199, and appeal is pending in the Supreme Court 86-1899.

Judge Wiseman denied filing of Earlene Polyak v William Boston, Boston Bates & Holt No. 3:85X-108 Pro se motions were disregarded and Application for Permission to Appeal No. 85-6081 was denied on February 14, 1986. (App.C.p. 49).It appears that 3:85X-108 was denied filing on Judge Wiseman's enjoin on November 13, 1985.

A second Complaint with demand for Jury Trial was submitted against William Boston Bates & Holt. All motions to schedu .e jury trial were disregarded, and Appellant finally submitted Writ of Mandamus No. 86-5462 to schedule jury Trial on second complaint against William Boston Boston Bates & Holt(App.Cp.38) A Writ of Mandamus No. 86-5460 was also submitted to schedule jury trial in Thomas Stack Henry Henry& Stack and answer disregarded motions on April 23, 1985. Lawyers handle state and federal in Columbia.

Judge Wiseman answered in letter to Johm P. Hehman,Clerk U.S. Court of Appeals on April 30,1986 stating the previous order of November 23, 1985,... That order was entered because of previous filings of Mrs Polyak against various persons of in this Court." Appellant believes that Judge Wiseman presides in the U.S. District Court located in the same building with the State Court, Columbia, Tennessee.She filed complaints in Nashville, but they were assigned to the local Court in Columbia(App C31) Both writs were denied and jury trials were never scheduled to this date.

Judge Wiseman enclosed an order with above letters enjoining himself from Appellant's cases and

closing cases on May 2, 1986 (App.Cp.42). This order was appealed No. 86-5536, and briefs in Extra-ordinary writ submitted to the Supreme Court.

The Honorable Thomas A. Higgins resumed cases and filed this case No. 1:86-0036 on May 12, 1986. A pre-trial was scheduled as a result of William Boston's son, Robert Boston's order on July 1,1986.

Appellant did not expect to go to conference as pro se litigant excluded under local rules, and she was ill with heart condition and required physical therapy as the result of a fall in December 1985.

Appellant filed motion for a continuance. medical statements, and affidavit(App.Bp20)and documents reply to defendant's motion for pre-trial conference; reply to answer; Reply to Defendants Response to Produce Records; motion by Plaintiff to Join Claims (D.C.1:84-0082 Frank Hulen and Wilma Lesnansky v Earlene Polyak, and Serve Summons) filed July 1,1986. (App. Bp.20,21,22-24)Case dismissed and closed on July 17, 1986(App.Bp16). Petition to Rehear Dismissal and Closing of Case denied on August 1, 1986. Notice of Appeal after dismissal in Court of Appeals filed on June 29, 1987(App. A p. 3).

REASONS WHY QUESTIONS REQUIRE PLENARY CONSIDERATION

1. The Court of Appeals affirms the abuse of discreation denial of due process and deprivation of civil and constitutional righs and laws by District Judge in closing cases without jury trial to determine malfeasance or negilence of lawyers and damages, in disregard of Tennessee Statute and Case Law and constitutional rights and laws.

Appellant relies upon settlement by agreement for division of property with co-tenants in 1976, in which partition in kind is supported by Tennessee Statute 29-27-201, Case law,28 U.S.C. 1443(1) &(2);42 U.S.C.Secs. 1981, 1982 and 1983, 5 U.S. 504;Fifth, Seventh and Fourteenth Amendments.

In 1976, Frank Hulen divided property to add acreage in back of farm house to his adjoining property,Wilma Lesnansky was to get acreage to east of house as son wanted to build, and Appellant agreed to house and lot in front.

As a result of this agreement,Appellant has restored with considerable investment and ten(10) years maintainence the house on her agreed partition for a retirement home to this date.

William Boston Boston Bates & Holt represented the family since 1976,but sued for sale 7/29/83.

Appellant relies relies upon partition in kind by Tennessee Statute:

> 29-27-201. If exact partition can not be made without material injury to the parties, or some one of them..., may make the partition as nearly equal as they can and charge the larger shares with the sums necessary to equalize all shares. Tennessee Code Annotated. 1932.

Appellant relies upon partition in kind and severalty:

> The Court may ...in accordance with the wishes of one or more of the cotenants, order an allotment of shares ... in kind and severalty, sale of other portion if it is not susceptable to partition in kind. Vandenburg v Molder,4 Tenn Civ.App(Higgins)111(1913)

Partition of property is supported by the Fifth Amendment in that "no person... shall be deprived of life, liberty, or property without due process of law; nor shall property be taken for public use without just compensation.And Seventh Amendment provides for Jury Trial.

Appellant has been in possession of partition of land and improved at her own expense, which is recognized in majority of states."Courts in almost all states in such circumstances have granted "specific performance" Hagerty v Hagerty,Tenn 172 259(1919)."... Courts have said taking possession making good improvements constitutes "good consider-

action in equity."Lindell v Lindell, 135 368 371 (1919). And recent Tennessee case supports partition in kind."Parole partition of land followed by possession is binding and enforceable." Martin v Taylor, 521 S.W. 2d 582.

Appellant believes that her right to to partition in kind and severalty established by state statute and case law is supported by the constitution and laws.She believes that William Boston Bates & Holt failed to protect her interest and constitutional right when they divided their lolyalties and sued her for sale of property in her possession as a result of settlement by agreement in 1976, appeared against her on July 29, 1983. Appellant contends that William Boston Boston Bates & Holt are responsible for damages for failure to protect her interests under constitutional rights and laws.

On December 19, 1983, Boston Bates & Holt submitted,after the Honorable Jim Hamilton instructed pro se litigant to appeal judgment submitted by William M Boston unappealable judgment signed by Charles Holt on December 20, 1983.On January 10, 1984,order of dismissal of Thomas Stack, Henry Henry & Stack

was signed by William Boston, Boston Bates & Holt Thomas Stack, Henry Henry & Stack, and Judge Hamilton signed both judgment and order.

The Court of Appeals dismissed appeal to denial of Motion for New Trial, and Alteration or Amendment of Judge to pay Appellant for restoration of house prior to distribution of the proceeds from sale in order stating that judgment appealed from (Boston Bates & Holt) was not a final judgment appealable as a right under TRAP Rule 3, on April 26, 1984(App.C.49).

Judge Hamilton instructed pro se litigant to get appeal in within ninety(90) days to judgment prepared by William Boston on December 19, 1983, and unappealable judgment signed by Charles Holt and Judge Hamilton on December 20, 1983. Appellant believes this action comes under 1983, in which "Every person, who under the color of any usuage usuage of any state, subjects or causes to be subjected any citizen ... to depriviation of rights priveleges ... constitution and laws, shall be liable to the party injured in action at law in equity..., and requires plenary consideration.

2. The Court of Appeals affirming of District Judge's dismissal of complaint without jury trial and dismissal of appeal to pretrial issues and closing of cases for lack of jurisdiction is erroneous as a matter of law and deprives due process to pro se litigant.

The Court of Appeals disregards that appeal to the dismissal of pretrial issues and closing of cases pursuant to 28 U.S.C. 1651 which gives Court aid in their jurisdiction.

> Court of Appeals has power to grant necessary relief in aid of the jurisdiction to prevent irreparable damage. Harris v Gibson, C A Ga. 1963 322 F 2d 780 376 US 908.
>
> When a party attempts to appeal from an unappealabel order, and circumstances justify Court's doing so, Court of Appeals in its discreation, may treat the proceedings as a petition under this section. Cord v Smith, C A Cal 1964 338 F 2d 516.
>
> Power granted to the Court of Appeals under this section ... there are present extraordinary circumstances which require issueance of extraordinary writ to prevent grave miscarriage of justice. Hartley Ten Co. v U. S. Dist Court. for Southern district of Cal, C.A. Ca. 1961.

Appellant appealed to the Court of Appeals that the extraordinary circumstances in which pro se litigant forced to defend her right to her property and the denial of due process and depriviation of civil and constitional rights and laws. She pled that loss of property irreparable damage and loss of a right to never be regained grave mis-

carrige of justice. She submitted extraordinary writ should issue to schedule jury trial to determine the amount and extent of damages due in this case in District Court.

Appellant believes The Honorable Thomas Higgins already prejudiced toward her when as a result of The Honorable Thomas A Wiseman's repeated dismissals of complaints without hearing and jury trial and total disregard of all motions, she submitted Writ of Mandamus in this Case No. 86-5462 to schedule jury trial. Judge Wiseman answered in letter on April 30, 1986, to John P. Hehman Court of Appeals that enjoin of November 13, 1985,1:85-0116, "That order was entered because of previous filings of Mrs Polyak against various persons of this Court. Judge Wiseman presides in Columbia, where state and federal court located in the same building. She had submitted complaints to Nashville to avoid local prejudice.

Appellant understands that local Rule 11(2) District Court,exempts pro se litigant from pre-trial conferences and procedures, but Mr. William iam Boston's son, Richard Boston represents his father and Boston Bates & Holt, and presented motion for pre-trial conference on July 1, 1986.

Appellant did not expect to go to trial, was not prepared, and acutely ill due to fall, heart failure and wearing heart monitor. She was barely able to stand, required extensive physical thearpy, and a heat-wave gripped Tennessee in which she learned over one hundred 100 people died.

Appellant submitted motion for a continuance with affidavit and medical statements, motion to join claims, motion to serve complaint and summons on Frank Hulen and Wilma Lesnansky, but motions were allegedly lost in Court until a few minutes prior to hearing. She believes that hearing held without her despite of all of her efforts.

Appellant appealed closing of case to be opened on good cause disadvantage to pro se litigant(1) she did not have any knowledge of law and did not have any way of determining what Judge Higgins would consider good cause;(2)Mr. Robert Boston would surely know Judge Higgins good cause; (3) burden of securing medical certificate as a condition prior to Judge Higgins even considering Appellant's motion to open case discrimination against pro se litigant liberty(5th amen), and(4) allow case open as Court did not have money for trials pursuant to article in Wall Street Journal.

In order of dismissal from the Court of Appeals on May 6, 1987, it is stated:

> That order merely denied her petition to reconsider a previous order which stayed all proceedings and removed the case from the district court's docket pending a showing that plaintiff's health would permit her to attend a pretrial conference.

The order on July 17, 1987 requires a medical certificate prior to any good cause for motion:

> However, any motion by plaintiff to reinstate this active docket shall be supported by medical certificate establishing plaintiff's physical ability to appear in Court and participate in this litigation.

Appellant believes that her contention that Judge prejudiced toward her when he filed initial complaint with the word "guilty", which she has tried to appeal enjoin by Judge Wiseman on November 13, 1985 in two cases.

Appellant has already submitted motion to schedule jury trial September 23, 1986, and 1987, disregarded by Court. She believes order for medical statement is against Appellant's Liberty to appear in Court to defend right to her property, and due process supported by Fifth and Fourteenth Amendments.

Appellant believes that the Court of Appeals takes, and denies jurisdiction to support District

Judges in prejudice and discrimination due process and civil and consituional laws for pro se litigant and all appeals are dismissed or denied by Clerks and docket control except order filed on May 6 ,1987.

Order in this case issued on May 6, 1987, states that "order is not final appealable within 28 U.S.C. 1291, and disregards pro se status, but on January 5, 1987 No. 86-5199, Earlene Polyak v Thomas Stack, this Court rejected argument that appeal was unappealable under 1291, and stated pro se status extraordinary Circumstance affirming Judge Wiseman's denial of Petition to Rehear Denial of Restraining Order under 28 U.S.C. 1292(a). See generally Petraco- valley Oil Refining Co. v United States Dept. of Energy., 633 F. 194 199(1980). Initially appeal was to Judge Higgn's order, but Ms Yvonne Henderson Case Suprevisor took jurisdiction of this Court when she ordered William Boston's son,Richard Boston to get appeal in and brought the motion for dismissal under 1291. Ms. Henderson contacted Supreme Court Clerks to affirm that "nothing would be done about this Case(App Ap. ?). Appellant contends that briefs and plenary consideration be awarded in denial of due process to pro se litigant.

3. The Court of Appeals affirms the District Court's disregard of right to jury trial and persistent disregard of due process and federal laws and the depriviation of civil and constitutional rights and laws.

The Court of Appeals affirms the dismissal and denial of complaints by District Judges against pro se litigant by dismissal and denial in docket control. Appellant believes that the affirming of complaint to Board of Professional Responsibility on October 29, 1984, is a recognized basis for complaint against William Boston, Boston Bates & Holt.

On November 8, 1985, Appellant filed a compaint No. 1:85-0116(Appeal No. 85-6134) Earlene Polyak v Jim Hamilton & the Circuit Court of(1983) Lawrence County after she was denied due process and the depriviation of civil and constitutional rights and laws when pro see litigant denied motion to forward records to Court of Appeals, Tennessee, in Buford Evans v Earlene Polyak, Counter-Clain No. 1:85-0120(Appeal No.85-6134) and joined 1:85-0120 under 28 U.S.C. 1441(c);VThomas Stack, Henry Henry & Stack No. 1:85-0125, and Earlene Polyak v William Boston Bates & Holt No. 3:85X-108.

Judge Wiseman dismissed 1:85-0116 under"judical

Immunity " filed under 1983, when immunity for State Judge does not exist, and complaint properly filed in District Court. Judge Wiseman enjoined pro se litigant from filing further complaints in disregard of right to sue under 1981 on November 13 1985. The Court of Appeals dismissed all attempts of pro se litigant to appeal this order.

In 86-6134, Court of Appeals dismissed complaint in docket control to appeal to order November 13, disregarding appeal to enjoin on August 15, 1986:

> In light of prior actions filed by the plaintiff, the court enjoined the plaintiff from filing without court permission, any future actions arising out of state litigation. The plaintiff filed this appeal from the underlying action.

In 86-5536, Re: Judge Wiseman's order on May 2, 1986 appeal to Judge's enjoin again and closing cases. The Court of Appeals again disregards pro se litigant's appeal to Judge Wiseman's enjoin on November 13, 1985, dismissed in docket control on November 24, 1986. NOT RECOMMENDED FOR FULL-TEXT PUB.

> Judge Wiseman issued an order prohibiting the plaintiff from filing future actions relating to the partition sale without prior approval of the court.... the Notice of appeal gives this court no jurisdiction to review the November 13, 1985, order containing injuncitive prohibition....

The Court of Appeals affirms the District Judge's disregard of U.S.C. 1441(c) in which casses were joined.Judge Wiseman did find complaint of negilence and malfeasance merited filing, but all motions to schedule jury trial were disregarded, and Court of Appeals denied Writ of mandamus No. 86-5160, to schedule jury trial on June 13, 1986.

The Court of Appeals affirms the dismissal of 1:85-0125, and remand back to state court,and dismissed appeal after Letter from Lawyer to Mrs. Yvonne Henderson, Case Supervisor. She allowed Petition to Rehear, but appeal dismissed again in docket control No. 85-6134.

The Court of Appeals affirms the denial by Judge Wiseman to file No. 3:85X-108 pursuant to order on November 13, 1985, 1:85-0116 on November 20, 1987. An Application for Permission to Appeal was denied February 14, 1986.

A writ of Mandamus No. 86-5462, to file this No. 1:86-0036, was denied by the Court of Appeals on June 13, 1986, which would only allow appeal if District Court did not file complaint.

In the letter to John P. Hehman on April 30, Judge Wiseman states Order on November 13, 1985,

"That order was entered because of previous filings of Mrs. Polyak against various persons in this Court. Prior to the order of May 2, 1986,all cases involving pro se litigant was handled in the Court in Columbia, Tennessee.Appellant specifically stated in complaints that they should be handled in jury trials in Nashville Court to avoid what she believed was local prejudice against her.

Prior to the above mentioned cases, only two cases were filed in the United States District Court. Appellant filed Petition to remove No.1:84-0083 Frank Hulen and Wilma Lesnansky v Earlene Polyak, which was dismissed on Robert Boston's motion. A second case No. 1:84-0083 Ealene Polyak v Frank Hulen and Wilma Lesnansky was filed to settlement by agreement supported by Tennessee Statute, Case Law, and Appellant's civil and constitutional rights and laws.

Case No.1:84-0083 was dismissed by Robert Boston's motion or res judicata. Since 1:84-0082 was not a final order as ruled by Court of Appeals in Tennessee on April 26, 1984, res judicata only valid on final order according to Supreme Court:

The Supreme Court has stated that it is

"familar law" that only final judgment is res judicata. G & Merriman Co. v Saafield, (1916) 241 US 22 28 S Ct.(36) 477 60 LEd 868.

Counsel Robert Boston was awarded costs and attorney fees in District Court on January 9, 1985. Appellant's objections were held until February 4, 1985.Meantime, she appealed case trhee times to get on Appeal No. 85-5032/5101/5147. The costs and attorney fees were composed mainly of long distance calls to counsel's father William Boston.

Appellant was not served with Certificate of Service, but cost listed as $850.01 on mandate. The Court of Appeals disregarded but finally denied motion to recall mandate. Motion to Stay order disregarded in District Court and Richard Boston filed Lein for $1112.16 on Appellant's property and has submitted to sell property despite pending Court action. Appellees denied encumberances in Complaint.

CONCLUSION

Appellant is seeking relief for damages as set out in complaint as a result of irreparable loss in damages and the loss of right to never be regained in her retirement home. As a direct and proximate result of William Boston and Boston Bates & Holt violating rules of offical conduct and appear-

ing against her after seven years possession of and restoration of retirement home after settlement by agreement with cotenants in 1976, and lack of discreation and failure to take reasonable precaution to avoid stress on Appellant in her acute health problems, Earlene Polyak has sustained damages by the way of mental anguish and emotional stress on damaged heart; pain and suffering; humiliation and embrassement in trying to defend her right to her property pro se, loss of ordinary pleasures of life, and in the depriviation of constitutional rights and laws.

Appellant pleads for injunctive relief in addition to above mentioned damages. In the alternative, she pleads that this case be returned to the District Court for Jury Trial

On the _____ day of September 1987.

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Certificate of Service

I certify that a copy of this pleading has been served on the United States District Court, and Robert Boston, 2100 One Commerce Place, Nashville, Tennessee 37219.

STATE OF MICHIGAN
COUNTY OF WAYNE

_____

_____
NOTARY PUBLIC

Commission expires:_____

APPENDIX A

In the United States Court of Appeals for the Sixth Circuit.

Earlene Polyak v William Boston, Boston Bates & Holt, No. 86-5916(District Court No. 1:86-0036).

Appeal dismissed May 6, 1987.

Before: Engel and Boggs, Circuit Judges,and Holschuh, District Judge.

Rehearing En Banc: Denied, June 24, 1987.

Before: Engel and Boggs, Circuit Judges,and Holschuh, District Judge.

Writ of Mandamus:denied on June 13, 1986, No. 86-5462. Re: Earlene Polyak v Thomas A. Wiseman Jr. United States District Court, Columbia, Tennessee.

Before: Martin, Guy and Boggs, Circuit Judges.

Petition to Rehear: Denied on July 23, 1986.

Before: Martin,Guy and Boggs.

Notice of Appeal to The Honorable Thomas A. Wiseman's Order of May 2, 1986, Enjoining Appellant Filing Cases, and Closing Cases filed May 7,1986. No. 86-5536. Dismissed November 24, 1986,docket conrcl. Petition to Rehear En Banc denied January 7, 1987.Before: Guy ,Edwards Circuit,and Edgar, District.

Order: August 1, 1986, Denying Petition to Rehear Closing of Case. Notice of Appeal on 8/21/86.

Presiding: The Honorable Thomas A. Higgins.

Complaint No. 3:85X-108, Earlene Polyak v William Boston Bates & Holt denied filing on November 20, 1985. Complaint joined to 1:85-0116 Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence County by 28 U.S.C. 1441(c), and Counter-Claim Earlene Polyak v Buford Evans & Sons No.1:85-0120, and Earlene Polyak v Thomas Stack And Henry Henry & Stack No. 1:85-0125 joined to 1:85-0116.

Presiding: The Honorable Thomas A. Wiseman Jr. in Columbia, Tennessee.

The Court of Appeals affirms the dismissal of all all attempts for relief by pro se litigant.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
Appellant

FILED JUNE 29, 1987

VS

No. 86-5916

WILLIAM BOSTON AND
BOSTON BATES & HOLT

NOTICE OF APPEAL

Appellant Earlene Polyak, gives notice of appeal to the Supreme Court of the United States from the final order dismissing appeal to Denial of Petition to Rehear Pretrial Issues and Closing Case in the United States District Court, issued by the United States Court of Appeals for the Sixth Circuit on June 24, 1987.

This appeal is taken pursuant to U.S.C.1254(2).

On the 26th day of June, 1987.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of this pleading has been mailed First Class to Richard Boston, 2100 One Commerce Place, Nashville, Tennessee 37219, Attorney for William Boston and Boston Bates & Holt.

No. 86-5916

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
Plaintiff-Appellant

FILED
June 24, 1987

V.

O R D E R

WILLIAM BOSTON AND
BOSTON BATES & HOLT
Defendant-Appellees

BEFORE: ENGEL AND BOGGS, Circuit Judges, and
HOLSCHUH, United States District Judge

The Court having received a petition for rehearing en banc, and the petition having circulated not only to the original panel members but also to all other active judges of this Court, and no judge having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition and concludes that the issues raised in the petition were fully considered upon the original submission and decision in this case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

Signed John P. Hehman

No. 86-5916

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Plaintiff-Appellant,

v

WILLIAM BOSTON AND
BOSTON BATES & HOLT

Defendants-Appellees.

FILLED
MAY 6, 1987

O R D E R

NOT RECOMMENDER FOR
FULL-TEXT PUBLICATION

Before: Engel and Boggs, Circuit Judges and
HOLSCHUH, District Judge

On August 20, 1986, plaintiff filed a notice of appeal from an "order" entered August 1, 1986. That "order" merely denied her petition to reconsider a previous order which stayed all proceedings and removed case from district court's docket sheet pending a showing that plaintiff's health would permit her to sttend a pre-trial conference. The oreder appealed from is not final and appealable within the meaning of 28 U.S.C. 1291. See Catlin v United States, 324 U.S. 229(1945). Therefore this court is without jurisdiction and the appeal is dismissed.

ENTERED BY ORDER OF THE COURT

ISSUED AS MANDATE 7/2/87

Signed John P. Hehman
CLERK

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
U.S. Post Office & Courthouse
Cincinnati,Ohio 45202

John P. Hehman
Clerk

December 22, 1986

Mr.William Boston
Boston Bates & Holt
2100 One Commerce Place
Nashville, Tennessee 37239

Re: 86-5916 Earlene Polyak vs. William Boston
District No. 86-0036

Dear Mr. Boston:

You are advised that the brief of the appellee due December 8, 1986 has not been received.

If the Clerk's Office does not receive your brief by January 5, 1987, the appellant will be instructed to file joint appendix. Failure to file a brief will result in a decision being made minus representation of yhe appellee ~~xxxxxxxxxxx~~ position. Fed. R. App. P. 31(c).

Very truly yours,
John P. Hehman,Clerk

Signed Yvonne Henderson
Mrs. Yvonne Henderson
Case Supervisor

cc: Earlene Polyak

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT
U.S. Post Office & Courthouse Building
Cincinnati, Ohio 45202-3988

July 8, 1987

Mrs. Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

Re: Case No. 86-5916
Earlene Polyak vs William Boston and
Boston Bates & Holt
Dist. Ct. No. 86-0036

Dear Mrs Polyak:

This letter will confirm our telephone conservation of this date.

I have contacted the Supreme Court of the United States and have learned there will be no action taken on notice of appeal filed June 29,1997. Therefore, our mandate issued July 2, 1987 will remain undistrubed.

Very truly yours,

Signed Yvonne Henderson
(Mrs. Yvonne Henderson
Case Supervisor

cc: William Boston

Note: Ms Henderson corresponds directly with client. Appellant has not been informed that Robert Boston Waller Lnasdon Dortch & Davis had been relieved by William Boston and Boston BAtes & Holt.

APPENDIX B

In the United States District Court, Columbia and Nashville, Tennessee.

Earlene Polyak v William Boston and Boston Bates & Holt. No. 1-86-0036

Filed: May 12, 1986

Pre-trial conference: Scheduled by motion of Defendants on July 1, 1986.

Documents filed by Plaintiff on July 1, 1986.

Request for continuance of nine ty (90) days.

Affidavit with attached statement Dr. Roni Sehayik, Orthopaedic Surgeon, and Dr. Z G Asuncion, Heart Speacilist.

In Reply to Defendant's Motion for a pre-trial conference.

In Reply to Answer.

In Reply to Defendant's Response to Produce Records and Documents.

Motion by Plaintiff to Join Claims(D.C. 1: 84-0082, Frank Hulen and Wilma Lesnansky v Earlene Polyak filed July 1, 1986. Dismissed

Motion by Plaintiff to Serve Summons and Complaint.

Order: Closing Case on August 17, 1986

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

United States District Court for Middle District of Tennessee

FILE No. 1:86-0036

EARLENE POLYAK

Plaintiff

VS NOTICE OF APPEAL

WILLIAM BOSTON AND
BOSTON BATES & HOLT

Notice is hereby given that Plaintiff above named appeals to the United States Court of Appeals from the final order denying Petition to Rehear Closing of Case. Plaintiff did not expect to appear at pretrial conference pursuant to Local Rule 11(2), appearance in court would place an extreme burden upon her in her present state of health, and order denies pro se litigant without knowledge and expertise in law equal access to justice. Petition to rehear was denied on August1, 1986.

Signed Earlene Polyak

Certificate of Service

I certify that a true copy was mailed to Robert Boston 2100 One Commerce Place Nashville Tennessee 37219

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK
Plaintiff

FILED JUL 28, 1986

VS

No. 1:86-0036

WILLIAM BOSTON AND
BOSTON BATES & HOLT
Defendants

PETITION TO REHEAR
CLOSING CASE

Plaintiff Earlene Polyak, petitions this Honorable Court for a Rehear of Order closing the above styled case on July 16, 1986.

The motion for a continuance was based on the extreme burden Plaintiff's appearance in Court would place upon her in her present state of health. Plaintiff did not expect to be ordered to pretrial conference to Rule 11(2), was not prepared to travel to Tennessee on such short notice, and made every effort possible to speak to the Honorable Thomas A. Higgins, notified Mr. Edward Boston's secretary, and Mr. Bates, to prevent the inconvience of this Court holding pre-trial conference without her presence.

further cases involving her property in Lawrence County in Hamilton et al No.1:85-0116).

Plaintiff petitions for rehear of the order closing case as she is obligatedto represent herself and would be at a disadvantage trying to open case. She has admitted that she does not have any knowledge or expertise in the legal profession. But, she has been taught that everyone has a right to a day in Court tp present grievance.

Plaintiff petitions this Honorable Court for a rehear of the order closing case.

On the 25th day of July, 1986.

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

Certificate of Service

I certify that a true copy of this petition to rehear and memorandum has been mailed to Richard Boston, 2100 One Commerce Place Nashville, Tennessee 37219.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK
Plaintiff

VS

No. 1-86-0036
Judge Higgins

WILLIAM BOSTON AND
BOSTON BATES & HOLT
Defendants

MEMORANDUM

Plaintiff Earlene Polyak, petitions this Honorable Court for a rehear of the order closing the above styled case on July 17, 1986.

The motion for a continuance was based on the extreme burden Plaintiff's appearance in Court would place on her in her present state of health. She presented a letter from a heart specialist, and the diagnosis of orthopaedic surgeon showing that she suffered an injury to her knees and need further treatment. Plaintiff called the Court immediately after receiving the order to appear at pretrial conference, and informed the clerk that she was having difficulty walking and had been in bed for about a week. She stated that she was reluctant to expose herself to ninety degree temperature in her present state of health. Copy of physical therapy enclosed.

1. The order closing case to be re-opened upon showing of good cause appears to be a disadvantage for pro se ligitant as she has already admitted she does not have legal knowledge and expertise, and does not have any way of determining what Judge Higgins would consider good cause. Plaintiff believes Judge Higgins has already formed unfavorable opinion about her as supported in his orders. ORDER

Motion to reconsider is denied. Thomas A Higgins USDJ 8-1-86

2. The order allows attorney for the defense to re-open plaintiff's case, and he must surely have the legal knowledge and expertise to determine what Judge Higgins considers good cause.

3. The order places the burden upon Plaintiff of securing a medical certificate and places her at a further disadvantage as a pro se litigant befor this Court.

4. Plaintiff has read in the Wall Street Journal that the District Courts do not have any money for Jury Trial and she requests that her case remain on the docket to prevent further delay in Jury Trial. Plaintiff petitions this Court for a rehear of closing case and encloses following memorandum.

Plaintiff called Judge Higgin's secretary and was instructed to submit a motion for a continuance about her health problems. She called Mr. Richard Boston's office and notified Mr. Bates that she would not be able to appear in Court. Plaintiff tried to prevent the Court any inconvience in holding pre-trial without her presence.

When Plaintiff called the Court on June 30,1986 and learned that secretary did not receive motion for a continuance, reply answer, reply to motion to produce records and documents, motion to join claims reply to pretrial conference , and motion to serve summons to join parties, she sent copies by express.

Plaintiff called again on July 1, 1986, and after several telephone calls, the motions were found in another office, and seh received a verbal continuance. Prior to this, Plaintiff mailed a telegram to verify thst the copies of the motions would be in express mail. Plaintiff did not receive any indication from the Court that the motion to correct record of May 12, 1986m in which she presented amended order leaving out the word guilty.She explained that has appealed this order.(Judge Wiseman order November 13, 1985, enjoin from filing

On the 25th of July, 1986.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of this petition to rehear closing of the above case has been mailed, First Class, postage prepaid to Richard Boston, 2100 One Commerce Place, Nashville, Tennessee. 37219

NEW U.S. CIVIL JURY TRIALS
STALLED onLACK OF FUNDS

By a Wall Street Journal Staff Reporter

WASHINGTON-The administrator of the federal courts told U.S. district courts that they shouldn't begin any new civil jury trials next week because there is no money to pay jurors.

Ralph Mecham, director of Administrative Office of the U.S. Courts, notified the 94 federal courts that no new civil jury trials may begin unitl Congress passes a pending appropriations bill $3.8 million to pay jurors for the remaining of the fiscal year ending Sept.30,1986.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JUL 17 1986

EARLENE POLYAK

V

WILLIAM BOSTON et al.

No.1-86-0036
Judge Higgins

O R D E R

The plaintiff's motion(filed July 1 1986) to continue the initial pretrial conference scheduled July 1,1986, was granted.

The motion for continuance was based upon the plaintiff's claim that her health would not permit her to appear because of seasonal heat. The motion was supported by plaintiff's affidavit and various medical records.

All further proceedings in this action are stayed until such time as the plaintiff's health will permit her to appear in court and attend to this ligitation being prosecuted pro se.

The Court has determined that an initial pre-trial conference is absolutely necessary in order to bring about some sound sence in the management of this ligitation.

Accordingly, the Clerk is directed to close this

PUBLISHER'S NOTE:

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case administratively to be re-opened upon motion and the showing of good cause, by either party. However, any motion by plaintiff to reinstate this action on the active docket shall be supported by a medical certificate establishing the plaintiff's physical ability to appear in court and participate in this ligitation.

The Court has received correspondance and telegrams from the plaintiff addressed directly to the undersigned. The plaintiff is diredted to address all pleadings and communications to the Clerk.

The Clerk is directed not to accept for filling any document that does not bear the caption and docket number of and action pending in this Court.

The Clerk is directed to file, as a part of the record in this case, a telegram received by the Court on July 1, 1986.

It is so ORDERED.

Signed Thomas A. Higgins
Thomas A. Higgins
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

RE:

EARLENE POLYAK

VS

District No. 1:86-0036
Appeal No. 86-5916

WILLIAM BOSTON AND
BOSTON BATES & HOLT

MOTION TO CORRECT APPEAL TO
DENIAL OF PETITION TO REHEAR PRE
TRIAL ISSUES AND CLOSED CASE

Plaintiff/Appellant Earlene Polyak, pursuant to FRAP(c) moves that this Honorable Court correct the appeal in the above styled case to show that Denial of Petition to Rehear Pretrial Issues and Closing Case by the Honorable Thomas A. Higgins on August 1, 1986, if the "order or part thereof appealed from." She believes the denial of rehear of closing of case denies the pro se litigant equal access to justice and moves Case No. 1:86-0036 be placed on active file docket of October, or April 1987.

On the 11th day of September, 1986.

Signed Earlene Polyak
Address

I certify that a true copy of this motion has been mailed First Class to Richard Boston, 2100 One Commerce Place Nashville, Tennessee 37219

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

Plaintiff

JURY DEMAND
No. 1:86-0036

VS

WILLIAM BOSTON AND
BOSTON BATES & HOLT

MOTION TO JOIN CLAIMS

Plaintiff Earlene Polyak, pursuant to Rule 18(b) FRCP, moves that the above styled claim be joined to No.1:84-0083, Earlene Polyak v Frank Hulen and Wilma Lesnansky and Case No..1:84-0082, Frank Hulen and Wilma Lesnansky v Earlene Polyak,in the United States District Court. And that the Court grant relief in the restoration and maintenance of retirement home to Plaintiff in accordance to her rleative substantive rights of inheritance,possession investment, and accrued value in property as a result of her investment. She demands just compensation for deprivation of civil and constitutional rights in taking clauses of Fifth and Fourteenth Amendments.And award of interest costs attorney fees and whatever relief appropriate at the time of entry of Court's order.

Plaintiff moves that Frank Hulen and Wilma Lesnansky be issued sumonns and compalint be served

Signed Earlene Polyak & Service

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK
Plaintiff

VS

WILLIAM BOSTON AND
BOSTON BATES & HOLT

JURY DEMAND

No. 1:86-0036

MOTION TO SERVE
SUMMONS AND COMPLAINT

Plaintiff Earlene Polyak, pursuant to Rule14 (b) FRCP moves that summons and complaint be served against Frank Hulen and Wilma Leansnaky to pay all costs and attorney fees claimed be Defendants against Plaintiff arising out of litigation of propery in original action by Frank Hulen and Wilma Lesnansky and their representation by William Boston Boston Bates & Holt, and that they be brought to Court action. Defendants prepared order.

4The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally except that the cost of this case shall be deducted from defendant's share of the proceeds.

Plaintiff contends that Frank Hulen and Wilma Leanansky snould pay all plaintiff's costs, Robert Boston's Attorney and whatever relief appropriate

Signed Earlene Polyak

C rtificate of Service

I certify Robert Boston served

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

Plaintiff

v No. 1:86-0036

WILLIAM BOSTON AND
BOSTON BATES & HOLT

NOTICE TO PRODUCE RECORDS AND DOCUMENTS

Plaintiff Earlene Polyak, requests the production of the following records;

1. The complete file of Rena Ann Hulen Estate.

2. Any and all written agreements between William Boston Boston Bates & Holt about the above Estate with Frank Hulen and Wilma Lesnansky.

3. All agreements between Frank Hulen and Wilma Lesnansky and Frank Hulen.

4. Any and all information about the Displinary action by the Board of Professional Responsibility, allowed without violating rules*

Dated: 2/28/86

Signed Earlene Polyak

* Should contain letter writen by William about plaintiff, which he alleges he presents to attorneys.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

Plaintiff

vs No. 1:86-0036

WILLIAM BOSTON AND
BOSTON BATES & HOLT

AFFIDAVIT

Plaintiff Earlene Polyak, being duly sworn oath deposes and says:

Affiant requests a ninety day continuance in the above styled case due to the extreme burden her appearance in Court would place upon her health at this time. She suffers complaications after a heart attack and open-heart surgery in 1979, which effects her ability to perform even basic tasks at times, and often results in hospitaization. Affiant is especially sensitive to heat and cold , and continuance would take her into the cooler months. Statements froms physician enclosed.

Affiant took a bad fall in the water from a leaking air conditioner, and has been under treatment since December 16, 1985. She is presently scheduled for more x-rays, physical therapy and has appoitment at University Hospital July 1,1986.

The order to appear at hearing on July 1,

arrived on June 23, 1986. Affiant was not expecting to appear in Court on such short notice, and she is reluctant to expose herself to ninety (90) degree temperature in Tennessee, with health problems and requests continuance.

Signed Earlene Polyak
and address

STATE OF MICHIGAN

COUNTY OF WAYNE

On the 29 day of June 1986, Earlene Polyak acknowledged that she executed the forgoing affidavit on her free act and deed.

My commission expires: August 15, 1990

Signed Enid Hammond
NOTARY

Note:

In this document Appellant verifies that she was ill and supported with physicians statements She understands that over 100 people died as a result of the heat wave gripping the South. Appellant only asked for a continuance until cooler wheather and until her health improves in October 1986. She only asked for time and improvement of weather conditions suitable to her health.

Telegram Service
Middletown Va.22645

WESTERN UNION MAILOGRAM

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

31367663364 TDBN TRENTON MI 19 07-01 0719A EST

BMS JUDGE THOMAS HIGGINS PLS RUSH DLR
800 Courthouse Nashville Ten

MOTION FOR CONTINUANCE, MOTION JOINING PARTIES 14BFRCP, JOIN CLAIMS,RULE18BFRCP, CASE NUMBER 1:86-0036 copies before 3 pm,

EARLENE POLYAK

Note: Appellant called District Court on June 31, 1986 to find out if motion for a continunce, motion to join claims, motion to serve summons, motion to produce documents and instruments were allegdly lost. She frantically started calling again on July 1, 1986, after sending copies by Express Mail, and finally resorted to a telegram to let Judge Higgins know that she would not be at pre-trial conference. Instruments finally found at 10:00 A.M. and continuance granted. It appears that pre-trial conference was held without her presence. Judge appeared offended by tele.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE:

EARLENE POLYAK

General Docket
No. 1 86 0036
Judge Higgins

O R D E R

On March 3, 1986,[1] Earlene Polyak tendered a complaint to the Clerk for filing, along with required filing fee, in the case of"Earlene Polyak v William Boston and Boston Bates & Holt."

The complaint alleges that the defendants have violated the plaintiff's civil rights and are guilty of legal malpractice arising out of the partition sale of certain property in Lawrence County,Tennessee. Jurisdiction is invoked on the basis of a federal question and the diversity of citizenship and the required amount in controversy.

Earlene Polyak has filed a number of previous actions in this Court related to the partition sale of certain property in Lawrence County, Tennessee. For the reasons stated in a memorandum filed November 13, 1985, and an order entered the same date in Civil

[1]See Clerk's date stamp on reverse side of civil cover sheet.

Action No. 1-85-0016(Earlene Polyak v Jim Hamilton indivually and in his judicial capacity as Circuit Judge, etc. et al.),Judge Wiseman found that Earlen Polyak was guilty of abusung the process of this Court and enjoined her from filing any further actions in this Court regarding the partition sale of property in Lawrence County without express permission of this Court.

After carefully examining the tendered complain although it is incoherent in many respects, the Court finds that it does not appear to seek to interfer with the paritition sale or set it aside. Accordingly, the Court concludes that the tendered complaint does not come within the scope of the injunction issued by Judge Wiseman.

The Clerk is directed to file the tendered complaint and issue process.

It is so ORDERED.

Signed Thomas A. Higgins
Thomas A. Higgins
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK
Plaintiff

Filed MAR 5 1987

v

No. 1:86-0036

WILLIAM BOSTON AND
BOSTON BATES & HOLT

MOTION TO SCHEDULE JURY TRIAL
OF REASSIGNED CASE

Plaintiff Earlene Polyak, moves that this Honorable Court schedule jury trial in the above reassigned case . She submitted Motion to Disqualify to Honorable Thomas A Higgins from the above and all cases involving Plaintiff. This motion and the motion to schedule jury trial has not been heard or acted upon in this case.

Plaintiff submitted motion to correct appeal to show that appeal pending in the United Court of Appeals is to denial of Petition to Rehear Pretrial issues and Closing of case on August 1, 1986, pursuant to FRAP order or part thereof appealed from"

In motion for jury trial on October 8,1986, Plaintiff moved that the above styled case be placed on the active docket for jury trial in October 1986, or April 1987, due to health.

Earlene Polyak Plaintiff

APPENDIX C

RELATED CASES

UNITED STATES DISTRICT COURT
Middle District of Tennessee
800 United States Courthouse
Nashville, Tennessee 37203

Office of the Clerk 615-251-7178

DATE: MAY 02 1986

RE: 1:84-0082; 1:84-0083; 1:85-0116; 1:85-0120; 1:85-0125 and 3:85X-108

JUDGE WISEMAN

ENCLOSED IS A COPY OF THE FOLLOWING:
ORDER(S)

signed by the Judge on MAY 02 1986 and entered on the docket by the Clerk on MAY 02 1986 in the above styled civil action.

CLERK U. S. DISTRICT COU

by: SHARI TIPTON

Enclosure

xc: John Hehman, Sixth Circuit Court of Appeals
Earlene Polyak
William Boston
Larry Brandon
Joe W. Henry Jr.
Thomas Stack
Charles Holt
Robert E. Boston

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
MAY 2 1986

... Re:
...ARLENE POLYAK

ORDER

I hereby rescue myself from all matters involving Mrs. Earlene Polyak. These matters are to be returned to the clerk for reassingment. The Judge to whom these matters are assigned should be furnished with allprevious filings and closed cases involving Mrs. Polyak including order of the undersigned enjoining rer from filing further cases for the purpose of consideration of whether a show cause order should issue to her to show cause why she should not be held in contempt of such order.

Signed Thomas A. Wiseman Jr.

This order was appealed on May 7, 1986, and after waiting for a briefing schedule, which did not arrive after motions and telephone calls a brief was filed by Petitioner. The Honorable Thomas A Higgins, District court refused filing copy of brief and it was returned.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

April 30, 1996

Mr. John P. Hehman, Clerk
United States Court of Appeals
U.S.P.O. & Courthouse
Cincinnati, Ohio 45202

Re. Case No. 86-5462 Mrs Polyak
Petition for Writ of Mandamus

Dear Mr. Hehman:

This petition complains of the action of the undersigned in failing to file and issue process on a complaint for Mrs. Polyak against William E. Boston. I have not previously acted upon this complaint because I was considering the issuance of a show cause order upon Mrs Polyak to show cause why she should not be held in contempt of the previous Order of November 23, 1985, whereby Mrs Polyak was enjoined from filing any further suits in this Court arising out of the patrition sale of her property in Lawrence County. That Order was entered because of previous filings of Mrs Polyak against various persons in this Court, all stating essentially the same facts, and arising out of state court proceedings which had been fully ligitated and adjudicated. I felt Mrs. Polyak was abusing the process of the Court. My decision has been reinforced by the petitions for

writ of mandamus received today. She has taken an inordinate amount of this Court's time to the determnint of othe ligitants and should be severely sanctioned therefor.

I have rescued myself concerning Mrs. Polyak and a copy of that order is enclosed. Please consider this my response to the petition filed herein.

Yours very truly,
Signed Thomas A. Wiseman

Note: Judge Wiseman presides at the Columbia, Tennessee Division of the United States District Court for the Middle District of Tennessee, which is located in the same building as the State Court. Petitioner believes Judge Wiseman is referring to the Columbia Court in which The Honorable Jim Hamilton presides over state cases,and cases are handled by William Boston, Boston Bates & Holt,and Thomas Stack Henry Henry & Stack(Buford Evans was retained by these lawyers). The petitions for Writ of Mandamus were submitted to schedule jury trials in No. 86-5460, William Boston Boston Bates & Holt and No. 86-5462, Thomas Stack Henry Henry & Stack in United States Court in Nashville.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Received for entry
November 13, 1985

EARLENE POLYAK

VS

Civil Action No.1:85-0116

JIM T. HAMILTON, Individually and in his judicial capacity as Circuit Judge, Jointly and severally, and The CIRCUIT COURT OF LAWRENCE COUNTY

ORDER

For the reasons stated in the Memorandum contemporaneouslyfiled herewith, the application for extraordinary relief is denied and the case is dismissed on the Court's own motion. No process shall issue but a copy of this memorandum will be mailed to defendants.

Plaintiff Polyak is expressly enjoined from filing any further actions in this Court regarding partition sale of property in Lawrence County without express permission of this Court.

Signed Thomas A. Wiseman

THOMAS A. WISEMAN JR.
CHIEF JUDGE

Note: The above case was entered and dismissed within five days of filing including a week end and summons were not issued, without any oral argument or hearing of any kind.

PUBLISHER'S NOTE:

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UNITED STATES DISTRICT COURT
MIDDLE DIESTRICT OF TENNESSEE

EARLENE POLYAK

Plaintiff JURY DEMAND

VS NO. 1:85-0125

THOMAS STACK
HENRY HENRY & STACk

Defednants

THRID MOTION TO SCHEDULE TRIAL

Plaintiff Earlene Polyak, moves that the Court schedule jury trial in the above styled case. First motion to scheduled jury trial submitted on November 18, 1985, second motion submitted on June 20,1986, The complaint was answered pursuant to Rule 7 FRAP on June 4, 1986. Plaintiff believes t that pursuant to Local Rule11 (a)(2) she is exempt to pretrial conferences scheduling conferences and pretrila procedure. She asked for jury scheduled in October, 1986, and due health problems and convenience of the Court suggested alternative of April 1987. Plaintiff moves for jury trial date on docket so she will know when to expect to appear and make preparations for appearance in Court.

On 18th day of September 1986.

Signed Earlene Polyak
with address and telephone no.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK
Plaintiff

JURY DEMAND
No. 1:86-0036

VS

WILLIAM BOSTON
BOSTON BATES & HOLT
Defendants

MOTION TO SCHEDULE JURY TRIAL

Plaintiff Earlene Polyak moves that this Honorable Court schedule jury trial in the above styled case. She has submitted a motion to correct appeal to show that she appealed denial of petition to rehear pretrial issues and closing case by the Honorable Thomas A. Higgins an August 1, 1986, pursuant to FRAP "order or part there of appealed from" Plaintiff contends that the District Court's failure to schedule jury trial denies pro se ligitant equal access to justice. She moves that the above styled case be placed on the active docket of October 1986, or April, 1987.

On the 18th day of September, 1986.

Respectfully submitted,

Name & address

Certificate of service.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE: JUL 23 1986

EARLENE POLYAK

Petitioner O R D E R

BEFORE: MARTIN, GUY and BOGGS, Circuit Judges

On June 13, 1986, this Court denied the petitioner's petition for a writ of mandamus whereby the petitioner sought an order directing the district court to file a civil action submitted by the petitioner. The petitioner now seeks a rehearing of that order.

We have reviewed our prior order in light of the present petition. We conclude the petitioner raises no issues or claims not previously considered by the Court and found to be without merit. The fact the petitioner asserts she appealed the November 13, 1985, order of the district court enjoining the petitioner's filing of additional civil actions without approval of the district court reinforces our prior conclusion that mandamus relief is not available in this case.

It is ORDERED that the petition for rehearing be and it hereby denied.

ENTERED BY ORDER OF THE COURT
Signed John P. Hehman

PUBLISHER'S NOTE:

Original Pagination is not continuous.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK
Plaintiff

vs

WILLIAM BOSTON AND
BOSTON BATES & HOLT

No._____
Lawrence Law

RESTRAINING ORDER

The above entitled matter having come to be considered for a Restraining Order on the 16th day of November 1985, from Earlene Polyak, and having examined the Petition for Removal and Exhibits, duly verified by Plaintiff is entitled to a Restraining Order to be issued by the Clerk.

IT IS THEREFORE, ORDERED that any one associated or employed with the above named be restrained from seizure, slae by any means including Public Auction, of Plaintiff's real or personal property located on Marcella or Jonestown Roads in the 14th Civil District of Lawrence County, Tennessee.

On the ____ day of _____1985.

_____
Judge

Note: This is another motion disregarded by the Courts.
Mr. Robert Boston has submitted order for sale for his father, William Boston Bates & Holt.

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL
Plaintiffs

VS CIVIL ACTION NO. 1974

EARLENE POLYAK
Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Court in Lawrence County, Tennessee, While holding Chancery Court for Lawrence County Tennessee, upon complaint hereto filed in this cause, the Answer thereto, the testimony of witness in open Court, and the entire record in in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the court found in memo dated August 11, 1983, the following findings:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

2. That the property cannot be partitioned in kind as there are three distinctly different

types of property within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level flat land which is suitable for raising crops.

3. The Court finds there is no way to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of said proceeds.

5. This sale shall be conducted by Eualn Hooper unless the parties agree on another real estate company.

All of which is therefore, ORDERED AND DECREED by the Court.

This the 19th day of Oct. 1983.

Signed Jim T. Hamilton
Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:
BOSTON BATES & HOLT

Signed William Boston
Attorney for PLAINTIFF
Signed Thomas Stack

JUDGMENT

This cause came on to be heard on the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge, upon motion this day filed by defendant, personally in her own behalf, Statement and argument of the Defendant, Earlene Polyak, in her own behalf, from all of which the Court finds no merit, and said motion is here and now overruled in its entirety. Judgment is signed by Charles Holt, Boston, Bates & Holt and Judge Hamilton and entered December 20, 1983.

ORDER

This cause came to be heard on this the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Courts of Lawrence County, Tennessee, on the Motion for a New Trial or for Alteration or Amendment of judgment of the order previously filed herein by the Defendant, Earlene Polyak by and through her counsel of record, Henry Henry & Stack, and upon the oral motion of said Earlene Polyak to be be allowed to represent pro se, and that Henry Henry & Stack be relieved as counsel and further aforementioned Motion not be heard in this Court IT IS THEREFORE ORDERED are relieved as counsel in this cause and that aforementioned Motion for a New Trial etc, be and hereby dismissed. This order was signed by Thomas Stack, William Boston and Judge Hamilton and entered January 10, 1984.

appellant's motion to alter and amend was heard on December 19, 1983, that on January 3,1984 appellant filed a notice of appeal "from the from the final judgment entered on December 20, 1983, but the order overruling appellant's motion to alter of amend was not entered unitl January 10, 1984.

... and it appearing that hte judgment from which appeal was sought is not a final judgment appealable as a right under TRAP Rule 3 in that said judgment orders the sale of property but does not confirm any sals or transfer

No. 85-6081

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE:

FILED
Feb 14, 1986

EARLENE POLYAK

Petitioner

O R D E R

BEFORE: MARTIN KRUPANSKY and GUY, Circuit Judges

This matter is before the Court upon consideration of petitioner's writ of mandamus.

The district court's denial of petitioner's petition for removal from federal court can only be made by a defendant and not by the party that filed the state action. Shamrock Oil Corp. v Sheets, 313 U.S. 100 107 (1941). There does not appear to be any circumstance which would justify the granting of the extraordinary relief sought. Allied Chemical Corp. v Daiflon Inc., 449 U.S. 33(1980); Kerr v United States District Court, 426 U.S. 394(1976); Hammons v Teamsters, Chauffers Etc. Loc. No. 20 754 F.2d 177(6th Cir. 1985); In Re Benedectin Products Liability Litigation, 749 F 2d 300(6th Cir. 1984); EEOC K-mart Corp., et al 694 F 2d 1055(6th Cir1982) Califano v monynahan, 596 F 2d 1320(6th Cir. 1979).

It is ordered that petition for writ of mandamus be and hereby denied. Signed John P. Hehman
Clerk